



**Minutes of the State Board of Health**

**June 14, 2006**

Red Lion Hotel Seattle Airport, 18220 International Boulevard, SeaTac, WA 98188

**SBOH members present:**

Kim Marie Thorburn, MD, MPH, Chair  
The Honorable Mike Shelton, Vice Chair  
Charles Chu, DPM  
The Honorable David Crump, PhD  
Ed Gray, MD

Keith Higman  
Mary Selecky, Secretary of DOH  
Frankie T. Manning, MN, RN  
Karen VanDusen

**State Board of Health Staff present:**

Craig McLaughlin, Executive Director  
Desiree Robinson, Executive Assistant  
Heather Boe, Communications Consultant

Ned Therien, Health Policy Analyst  
Tara Wolff, Health Policy Analyst  
Pam Anderson, Assistant Attorney General

**Guests and Other Participants:**

Gary Arthur, Washington Education Association  
Jennifer Aspelund, Citizen  
Janna Bardi, Department of Health  
Ruth Bennett, People's Memorial Association  
Ania Beszterda, Lifelong AIDS Alliance  
Art Busch, Washington Education Association  
Susan Buskin, Public Health—Seattle and King County  
Larry Bye, GSK  
Steven Carzasty, Group Health Cooperative  
Mark Charonis, Department of Health  
Maria Courogen, Department of Health  
Leonard Dawson, Jr., Brother to Brother  
John Forkner, Washington Cemetery and Funeral Association  
Denise Frisino, Citizen  
Gary Goldbaum, Public Health—Seattle and King County  
James Green, Citizen  
Chip Halverson, Washington Education Association  
Charles Hasse, Washington Education Association

Ward Hinds, WSALPHO  
Jim Kent, Public Health—Seattle and King County  
Florentino Lopez, Entre Hermanos  
James Matteurci, Merck  
Dennis McPhee, Department of Licensing  
Tracy Mikesell, Department of Health  
Donn Moyer, Department of Health  
John Eric Rolfstad, People's Memorial Association  
Dennis Saxman, Citizen  
Jeffrey Schouten, GACHA  
Kelly Scott, Citizen  
Gary Shenkle, University of Washington School of Public Health  
Chris Spitters, Yakima Health District  
Gayle Thronson, Office of Superintendent of Public Instruction  
Mike Wanderer, Group Health Cooperative  
Norma Wells, Citizen  
Frank Westrum, Department of Health  
Diana Yu, Thurston County Public Health  
Christopher Zilar, Spokane Regional Health District

Dr. Kim Marie Thorburn, WSBOH Chair, called the public meeting to order at 9:33 a.m. and read from a prepared statement (on file).

### 1. APPROVAL OF AGENDA

*Motion: Approve June 14, 2006 agenda*

*Motion/ Second: Crump/Manning, Approved unanimously*

### 2. ADOPTION OF MAY 10, 2006 MEETING MINUTES

*Motion: Approve the May 10, 2006 minutes*

*Motion/ Second: Crump/Manning, Approved unanimously*

### 3. SBOH ANNOUNCEMENTS AND OTHER BOARD BUSINESS

Craig McLaughlin, WSBOH Executive Director, described items behind Tab 3 in members' packets. He described efforts to recruit candidates for the tribal position and the other health and sanitation position on the Board. He mentioned that he had also started to recruit members for the Health Disparities Council. Mary Selecky, Secretary of the Department of Health (DOH) & WSBOH Member, commented that Board members might be able to help on these recruitment efforts. Mr. McLaughlin also requested Board members' assistance in identifying candidates for the Warren Featherstone Reid award. Mr. McLaughlin gave updates on the immunization rules and human remains rules. He mentioned letters sent in response to requests for rule making. He is pursuing potential organization of a public forum on health disparities the day after the first Health Disparities Council meeting in October 2006. He discussed the work of the Joint Select Committee on Public Health Financing and a report of the committee that can be found on the DOH web site. Secretary Selecky commented that the discussions of the committee are complex because the public health system in this state involves 39 independent-thinking counties. Karen VanDusen, WSBOH Member, suggested that Mr. McLaughlin inform the committee about the input the Board received at recent forums about public health financing. Mike Shelton, WSBOH Vice Chair, noted that property taxes are more acceptable in some counties than others and, therefore, there needs to be a menu of possible taxing options for public health financing.

### 4. DEPARTMENT OF HEALTH UPDATE

Secretary Selecky commented on the Donald Berwick article included in Tab 3 about how to fix the health care system. She described her recent rural health bus tour to eight small communities. The concern she heard most about on the tour was recruiting physicians to work in rural areas. Another major concern was the need for bilingual health care workers. She also heard emergency preparedness planning has had a broad impact on expanding communication between various agencies and community organizations. The Governor's Blue Ribbon Access Committee will have a full day meeting at Olympia High School on June 22. Task Force and JLARC meetings on Certificate of Need requirements are stressing a need to restrain health care costs. Health professions' standards have come under recent press attention and scrutiny by the Governor's office. DOH professions disciplinary procedures are under review by the State Auditor.

### 5. FORUM DEBRIEF AND STATE HEALTH REPORT

Chair Thorburn pointed out the State Health Report under Tab 5 and said public input from the three recent public forums will be incorporated into the report. Mr. McLaughlin said the forum evaluations were not as positive as for the other two forums. People had negative comments about the length of local public health program presentations. They wanted more time for breakout sessions and general public comment. He said that the conclusion of the report will discuss themes heard at the forums. He will also update the report to reflect new initiatives started since the report

was drafted. He suggested that an appendix would contain a summary of the input from the forums. Input from the forums will be compiled in detail and posted on the Board's web site. In addition, sidebars will be added discussing the Veterans' Department and the Transformation Grant Program. Member VanDusen suggested that there be a separate chapter in the report regarding public input. She also commented that she would like issues regarding health care for seniors highlighted.

*Motion: The Board directs staff to develop a final proposed 2006 State Health Report in close consultation with the Chair. Revisions to the report should reflect the direction provided at today's meeting, including a chapter on "The Public Speaks." Members will be given an opportunity to review the revisions. The Chair is authorized to approve a final proposed report for transmittal to the Governor by June 30, 2006.*

*Motion/ Second: Crump/Manning, Approved unanimously*

*The Board took a break at 10:48 a.m. and reconvened at 11:06 a.m.*

## **6. BOARD MEMBER COMMENTS AND CONCERNS**

Chair Thorburn commented that the Spokane Regional Health District has chosen senior health as its focus for a major community assessment during the coming year. She acknowledged that the 25<sup>th</sup> anniversary has just passed of the MMWR article that identified a health problem in gay men, and marked the start of the AIDS epidemic. She said that many opportunities were missed to help control this epidemic.

Member Shelton said he sees real opportunities for the state to benefit from the Mental Health Transformation Grant process. He also commented that Island County was instituting a program with DSHS and other partners to help seniors with feelings of isolation.

David Crump, WSBOH Member, commented that all of the RSNs that applied for mental health funding have now had applications accepted.

Ed Gray, WSBOH Member, commented that he hopes the Governor's Blue Ribbon Committee on Access will have more success than similar committees he worked on about 20 years ago.

Secretary Selecky said Clallam County has received a Robert Woods Foundation grant to assist seniors with aging in place. She noted that federal funding for general public health preparedness has been reduced; preparedness funding is now focused on pandemic influenza.

## **7. RECOMMENDATIONS ON TETANUS, DIPHTHERIA, AND PERTUSSIS; CONSIDERATION OF FINAL REPORT ON IMMUNIZATION CRITERIA**

Chair Thorburn explained the materials behind Tab 7. She introduced Tara Wolff, WSBOH Staff; Dr. Diana Yu, Health Officer for Thurston, Mason, and Lewis Counties; Gayle Thronson, Office of Superintendent of Public Instruction; and Janna Bardi, Immunization Program Manager, DOH, who staffed or served on the Immunization Advisory Committee that developed recommended criteria for including immunizations in requirements for children. They explained changes in the recommended criteria since the Board reviewed the interim report at its April meeting. Dr. Yu said it would be beneficial to have a two-year waiting period after a vaccine is added to the state universal purchasing system before it would be considered for rule inclusion. Chair Thorburn noted that a vaccine could be recommended even when all criteria are not met and such was the case for the tetanus vaccine. Secretary Selecky said the recommendations document could use some editing for "plain talk" to help non-medical people understand it. Member Gray asked whether the committee considered federal requirements for immigrants. He said the INS criteria seem elusive. Chair Thorburn replied that the committee did not consider this. Secretary Selecky and other Board

members commented on the need to provide support for school nurses, who are partners in efforts to assure children receive proper immunizations.

*Motion: The Board approves the Criteria for Reviewing Antigens for Potential Inclusion in WAC 246-100-166 recommended by the Immunization Advisory Committee. It also accepts the Technical Advisory Group's recommendations that tetanus, diphtheria, and pertussis be retained in WAC 246-100-166 and that the rule be updated to incorporate the 2006 Recommended Childhood and Adolescent Immunization Schedule.*

*Motion/Second: Crump/Manning, Approved unanimously*

## 8. SCHOOL ENVIRONMENTAL HEALTH RULE UPDATE – CHAPTER 246-366 WAC

Keith Higman, WSBOH Member, introduced an update on the proposed draft school rule. He said that the first draft achieved its intended purpose of stimulating a lot of input and there are many outstanding issues the Board needs to consider. Craig McLaughlin introduced material behind Tab 8. Gregg Grunenfelder, DOH Assistant Secretary for Environmental Health, gave a brief history of the school rule's development and summarized comments that DOH received on the first draft. Because of the great amount of comments received, DOH recommends slowing the process to give it time to study the comments, brief the Board about issues, and develop another draft of the rule. He said school health and safety required an integrated approach involving multiple agencies. Member Crump asked for a clarification on how long the slower process might take. Mr. Grunenfelder said the delay would be on the order of months, rather than years.

Mr. McLaughlin stated that the School Rule Development Committee's recommendations have gone a long way towards helping develop the rule. However, it is important to step back to take a more comprehensive approach. He recommended that the Board hold study sessions on school health and safety issues. Chair Thorburn suggested that DOH and Board staff should have informal meetings with other agencies to encourage their participation in educating the Board. Member Shelton said that the Board needed to hear from representatives of local school districts and school boards. He encouraged seeking ways to bring the Governor's office and legislators into the process so that they are more aware of the issues and public concerns, because only they can provide funding for corrections. Member VanDusen commented that legislators have devoted a lot of attention to energy efficiency in public building design. She would like at least as much attention spent designing buildings that are safe and healthy. The Board asked Mr. McLaughlin to present a proposed schedule of work sessions at its July meeting.

*The Board recessed for lunch at 12:38 p.m. and reconvened at 1:35 p.m.*

## 9. HIV NAME REPORTING, PERMANENT RULE HEARING – CHAPTER 246-101 WAC

Vice Chair Shelton chaired the Board for this item because Chair Thorburn recused herself. Member Gray gave an overview of this item (see memo, Tab 9) and introduced Ned Therien, WSBOH Staff, and John Peppert, DOH. Mr. Peppert discussed the seven issues on which DOH received comments regarding proposed amendments to Sections -210, -520, and -635 of Chapter 246-101 WAC (see detailed description in tab 9). Member VanDusen asked a number of questions exploring security guidelines and procedures (including assurance and audits) that would be in place at local health jurisdictions if this rule was adopted by the Board. Mr. Peppert said some smaller local health jurisdictions might not elect to maintain names at all due to the complexities of maintaining the data securely. Member VanDusen and Secretary Selecky discussed the prospects for continued federal funding for AIDS and HIV programs.

Testimony included:



Diana Yu, Local Health Officer for Thurston, Lewis, and Mason, testified in favor. Said HIV/AIDS should be treated the same as other highly infectious, sexually transmitted diseases.

Dennis Saxman, speaking as person living with AIDS and a member of the public, testified against. He expressed concerns about confidentiality and security of the data. He provided board members with a written summary of his concerns.

Christopher Zilar, Spokane Regional Health District, testified in favor. He said the rule change might increase client confidentiality.

Dr. Jeffrey Shouten, Chair, GATCHA testified in favor with concerns.

Dr. Ward Hines, Health Officer for Snohomish County, testified in favor and provided a letter of support to Board members.

Kelly Scott, Attorney, testified in favor with concerns.

Dr. Gary Goldbaum, family practice physician at Harborview and director of the HIV/AIDS program at Public Health – Seattle & King County, testified in favor of the rule and directed the Board's attention to a letter written by Bob Wood, also in favor.

Ania Beszterda, Lifelong AIDS Alliance, and Florentino Lopez, Entre Hermanos, both testified against the rule. Mr. Lopez called the Board's attention to written testimony signed by eight organizations opposing the rule change.

Dr. Michael Wanderer, Group Health, testified in favor with concerns.

Dr. Yu, Health Officer of Thurston, Mason, and Lewis Counties, commented that names of reported cases of HIV/AIDS are never given to law enforcement by any local health jurisdiction.

Dr. Chris Spitters, Health Officer for Asotin, Yakima, and Klickitat Counties, testified in favor.

Member VanDusen expressed a desire that the rule provisions include the assurance of a high level of data security, especially regarding local health personnel maintaining confidentiality. Assistant Attorney General Pam Anderson explained that there were two levels of protection besides the rule: federal HIPAA and the Washington State Health Care Information Act. She stated the protections afforded medical records would not be removed by the rule. Member Crump asked for clarification about confidentiality requirements, whose authority breaches of confidentiality fall into, and how false positives would be dealt with. AAG Anderson indicated that state confidentiality laws must be as strict as federal law, but can be stricter. She said a breach of confidentiality falls under many disciplinary realms (for example, providers can be sanctioned under professional licensing rules, employers have provisions in contracts for employees, and there are causes for action for breach of confidentiality in the courts that could include criminal sanctions). Keith Higman, SBOH Member, commented that both sides (those for and against the rule) had the same goals of decreasing HIV prevalence and that it was unfortunate, but understandable, that funding and distrust needed to be part of the discussion.

Member VanDusen commented that she could not find language in the rule allowing local health jurisdictions to continue to destroy names after three months, which could be important to small counties. Board members discussed changes in the rule language that clarified this. The Board agreed to change the wording of WAC 246-101-520 (1)(b) to read: "Destroy case report identifying information on asymptomatic HIV-infected individuals received as a result of this chapter within three months of receiving a completed case report, or maintain HIV case reports in secure systems that meet the following standards and are consistent with the 2006 *Security and Confidentiality Guidelines* developed by the Centers for Disease Control and Prevention..."

The Board also decided to insert a phrase at the beginning of WAC 246-101-520(1)(d) so the subsection reads: "If maintaining identifying information on asymptomatic HIV-infected individuals more than 90 days following receipt of a completed case report, cooperate with the..."

Member Crump began a discussion about adding a “kill clause” in the event of a change in federal requirements. Secretary Selecky commented that there was ample precedent for the Department to report back to the board about rule implementation and changes in factors affecting a rule. Mr. Peppert suggested that a subsection (12) be added to WAC 246-101-635 to read: “The state health officer must provide a report to the state board of health if federal policy no longer requires that HIV surveillance systems be name-based.” The Board decided to add this subsection to the rule.

*Motion: The Board adopts amended sections WAC 246-101-201, WAC 246-101-520, and WAC 246-101-635 as published in WSR 06-10-081, with amendments decided on by the Board and included in the record for this day.*

*Motion/ Second: Crump/ Gray, Approved unanimously*

*The Board took a break at 3:36 p.m. and reconvened at 3:45 p.m.*

#### **10. HIV NAME REPORTING, CONTINUATION OF EMERGENCY RULE – CHAPTER 246-101 WAC**

Member Gray introduced this agenda item and read the motion. Member Higman asked how long the emergency rule would be in effect. Mr. McLaughlin said up to 120 days but that staff will work to have it lapse when the permanent rule goes into effect.

*Motion 1: The Board finds that rules existing before March 8, 2006 prohibit the Department of Health keeping records with the names of HIV-infected individuals more than 90 days. These rules threaten the loss of federal funding to state and local health services in Washington. This constitutes an emergency situation for rule making under RCW 34.05.350(1)(b).*

*Motion/ Second: Gray/ Shelton, Approved unanimously*

*Motion 2: The Board directs its executive director to continue the emergency rule regarding WAC 246-101-520 and WAC 246-101-635 that was adopted by the Board on March 8, 2006 to be effective until a permanent Board rule on these sections becomes effective.*

*Motion/ Second: Gray/ Shelton, Approved unanimously*

#### **11. HUMAN REMAINS RULE BRIEFING – CHAPTER 246-500 WAC**

Member VanDusen introduced this agenda item. Ned Therien gave a presentation on the rule proposal (see *Proposed New Chapter 246-500 WAC Handling of Human Remains*, Tab 11). Mr. Therien then introduced Dennis McPhee, Department of Licensing and Philip Freeman, DOH. Mr. Therien said the proposal is scheduled for public hearing in July. Member Higman asked about the support from affected parties. Mr. Therien stated that many comments on early drafts had been addressed in the proposed rule he did not believe that many concerns remain.

#### **12. PROPOSED RULE MAKING FOR WATER TESTING LABORATORIES – CHAPTER 246-390 WAC**

Member Higman introduced this agenda item. Ned Therien once again introduced Gregg Grunenfelder, DOH, as well as Jim Hudson, DOH. Mr. Grunenfelder gave a presentation (see tab 12 – *Request for Rule Change*) explaining DOH’s request for the Board to initiate rule making. He said that the rule making would look at timely reporting procedures, but DOH would not propose mandatory electronic reporting in this rule revision.

*Motion: The Board directs the executive director to initiate rule making, in conjunction with the Department of Health, by filing a CR-101 for the purpose of revising chapter 246-390 WAC, Drinking Water Laboratory Certification. The Board requests the Department to develop a rule proposal with the goals of ensuring efficient certification of drinking water laboratories in cooperation with other state agencies; ensuring efficient and timely reporting of laboratory results to the Department regarding public drinking water supply systems; and maintaining state primacy for enforcement of the federal Safe Drinking Water Act.*

*Motion / Second: Higman/Crump, Approved unanimously*

### 13. PUBLIC TESTIMONY

Gary Arthur, read a statement from his wife about her suffering from continuing health effects a Stanford University immunologist has associated with mold exposure, which she was exposed to while working in a school with a leaky roof. He expressed his wife's feeling of betrayal by the school district for which she worked 35 years and a lack of protection by state officials.

Charles Hasse, President of WEA, thanked the Board for its recommendation to delay the school health and safety rule to allow more study of issues of concern. WEA supports the Board taking a comprehensive look at the issues. He said the WEA is prepared to participate in developing an enforceable rule.

Denise Frisino, former teacher, thanked the Board for listening to the public about the school rule. However, she expressed displeasure with the long introductory statements at the forum the previous evening and the attitude of a local official. She proposed a concept that mandatory school safety committees gather and report data to state officials.

John Eric Rolfstad, Executive Director, People's Memorial Association, stated that his association considered the Board's direction on the human remains rule was positive. He stressed that death does not cause contagion. However, his association still has concerns and asked the Board to allow a body to be removed from refrigeration for longer time periods, clarify the definition of human remains regarding cremated remains, minimize restrictive barrier precautions, and allow dry ice to be used to cool a body in funeral establishments as well as outside of funeral establishments. He asked that the Board base the rule on true public health needs, not perceptions.

James Green, Clean Air Now, said he was encouraged by the Board's discussion today about the school rule. He asked the Board to make sure careful delays did not derail the project.

Jennifer Asplund, parent, asked for the School Rule Development Committee to be included in future decision making regarding the school rule. She expressed concern that a Seattle school recently replaced carpeting with used hotel carpeting. She also expressed concern about another incident where she felt Public Health—Seattle & King County took too long to notify parents about a student with tuberculosis in a school.

Christopher Zilar, Spokane Regional Health District, stated that many rules that exclude people with infectious disease, notably HIV infection, from certain activities and professions should be re-examined by the Board or other appropriate authorities.

Dr. Kim Marie Thorburn, WSBOH Chair, adjourned the meeting at 4:56 p.m.